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Supreme Court, U.S.
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No. 08-_____

In The

Supreme Court of the United States

MARGUERITE SAMMANN, Individually, and as Executrix of the Estate of DR. HOWARD DAVID SAMMANN, M.D., et al.,

Petitioners,

v.

FRANCIS N. MAYER, Individually, and LOUISE MAYER, Individually, and as a Marital Community, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A Ninth Circuit panel affirmed a single Federal judge's sua sponte dismissal of Marguerite and Nadene Sammann's substantial monetary claims for federal Oil and Gas Leases and for other properties. The federal leases are for valuable commercial quantities of oil and gas, many of which are located in Alaska. Petitioner Marguerite is the widow of Dr. Howard David Sammann, M.D. and Executrix of his estate. She was married to him for 31 years, when he died after a 7 year illness. It was a first and only marriage for both.

The questions presented are:

1. Should petitioners have been punished so severely with dismissal when the Ninth Circuit (in an unpublished decision) upheld the denial of their right to timely amend their complaint?

2. May the Ninth Circuit use an in-house method of deciding the merits of a case based on the length of a petitioner's docket (as the Ninth Circuit did here, contrary to the other Circuits), when petitioners were never informed that their case would be decided in this manner, and the Supreme Court has specified that only legal standards of review should be used to decide the merits of a case?

3. Is this punitive dismissal of their multi-million dollar complaint and denial of the right to amend their complaint constitutional due process?

PARTIES TO THE PROCEEDING

The petitioners in this Court include Marguerite Sammann individually, and as Executrix of the Estate of her late husband, Dr. Howard David Sammann, M.D.. Their only child, Nadene M. Sammann is also a petitioner. They were plaintiffs in the district court and appellants before the Ninth Circuit Court of Appeals.

The respondents in this Court include Francis N. Mayer, individually, and as a Marital Community, and Louise Mayer, individually, and as a Marital Community. They were defendants in the district court and appellees before the Court of Appeals. Francis N. Mayer as personal representative of the Estate of Elizabeth Sammann was also a defendant in district court and an appellee in the Court of Appeals.

Petitioners Marguerite Sammann and Nadene Sammann were not notified that the Estate of Elizabeth Sammann (grandmother to Nadene) had been closed before the filing of this lawsuit.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Marguerite and Nadene Sammann respectfully petition for a timely writ of certiorari to review the ruling of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's two unpublished opinions affirming the district court's dismissal of this case and denying rehearing and rehearing en banc are unreported and are reprinted at App.1-4. The district court's two unpublished opinions are unreported and reprinted at our supplementary appendix.

JURISDICTION

The Ninth Circuit affirmed the district court's dismissal of this case on September twenty-seventh, 2007, and denied petitioners' timely request for rehearing and rehearing en banc on November twenty-ninth, 2007. This Court has jurisdiction under 28 U.S.C.sec.1254.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides: "No State shall deprive any person of life, liberty, or property, without due process of law". The Fifth Amendment provides: "No person shall be deprived of life, liberty or property, without due process of law."

INTRODUCTION

This petition seeks review of a tort case involving due process and valuable federal oil and gas leases. This case raises important federal questions about manifest injustice.

1) *First* Amending a complaint for the first time is usually granted as a matter of course. In this case, we had previously made only one change to our complaint: adding the name of Louise Mayer to the caption. No other change was made before we filed our full amended complaint. In upholding this dismissal of our case, the Ninth Circuit departed from the wide latitude traditionally given to a litigant when a case is in its infancy.

2) *Second.* The Supreme Court has established specific legal standards of review that the lower federal courts must follow. The Ninth Circuit has departed from these standards of review by deciding the merits of a case based on the length of an unrepresented litigant's docket. In ruling on our case, the court overlooked the Federal Disasters and blackouts that we faced in the Seattle area while our appeal was pending. We believe the Ninth Circuit's methods lack fundamental basic fairness to litigants.

3) *Third.* The Ninth Circuit affirmed a punitive dismissal and denial of our right to amend our complaint. Considering how diligent we were about our case, it does seem that the Ninth Circuit did not use the correct reasoning to decide this case. We did not deserve the dismissal of our original complaint and our amended complaint.

STATEMENT OF THE CASE

A. Factual Background

1. Petitioner Marguerite Sammann is the widow of Dr. Howard David ("David") Sammann. She is also the Executrix of his estate. When David died, after a 7 year illness, he and Marguerite had been married for more than 31 years. It was a first and only marriage for both. Nadene is their only child.

During their 31 year marriage, David and Marguerite lived in California, Alaska and Washington State, amongst other places

David was an internationally educated physician. He was a practicing medical doctor specializing in industrial and aerospace medicine. He was an experienced pilot and an FAA Senior Examiner. He and Marguerite owned their own plane.

David had a deluxe one million dollar medical insurance policy. When he died, most of the medical benefits were unused.

After his death, petitioners discovered that the community assets, David's estate and family fortune had vanished. Elizabeth Sammann (grandmother to Nadene) could give them no information about David and Marguerite's fortune,

The result was that Marguerite and Nadene were chased by many creditors. We were literally left with all the debts of the estate, and the family fortune had disappeared.

We suffered lost income, lost a family business. And we were in constant danger of losing our home. The creditors wanted the home and every last thing we possessed.

Respondents are Francis N. Mayer and Louise Mayer, husband and wife. They are longstanding residents of St. Paul, Minnesota.

Before David's death, his first cousin, Francis Mayer and Mayer's wife, Louise, had cultivated David and Elizabeth. After David's death, both Francis and Louise Mayer disappeared. It was as though they dropped off the face of the earth.

In May, 2005, two weeks before this case was filed in Federal District Court in Seattle, petitioners discovered the Federal oil and gas leases in this case. The Mayer respondents had concealed and converted the federal oil and gas leases and other properties to themselves.

Petitioners also discovered that a death certificate for Marguerite Sammann had been created and filed in the State of Minnesota. The death certificate was filed six months before David's death.

Neither Marguerite or Nadene has ever visited or lived in Minnesota.

Petitioners tried to secure legal counsel, but lacked the funds to pay an attorney.

The Facts related above are from our original complaint and corrected brief in the Ninth Circuit.

B. Proceedings Below

1. Plaintiffs filed this lawsuit on May 19, 2005 in Federal District Court in Seattle, Washington. We were unrepresented. We paid the filing fee.
The Mayer respondents were timely served but never answered the complaint. Instead, they filed a motion to dismiss the complaint, or in the alternative, for summary judgment. Within their motion to dismiss they stated that additional defendants needed to be added. We requested and received permission to add defendants and timely amended our complaint. We also asked for an extension of time to prepare our response to the respondents' motion.

2. Pursuant to the statute 31 U.S.C. 3730, we asked the Court to seal the amended complaint and for an extension of time to serve it. The court gave us an extension of time and then ordered us to serve all the defendants. The Court never specified *which defendants* we were to serve, e.g. whether the Mayer defendants or the new defendants we had added to the complaint should be served.

3. At this point in time, all our pleadings were up to date; we had met our joint status report requirements. We were diligent about our case.

4. After explaining to the Court that the statute required a stay of service of 60 days on any and all the defendants, the court ordered us to serve the defendants, again never specifying which defendants.

5. We communicated to the Court, and requested oral argument on our Motions. The Court refused to hold any hearings or status conferences. The Court never asked to meet with us or hold any status conferences. During the entire District Court proceedings, we never had any hearing in District Court or met with the judge. There was no trial, and no discovery took place.

6. On February 28, 2006, the court dismissed our complaint, and denied us the right to amend our complaint, citing our failure to follow a local rule. The Court essentially converted its dismissal into a summary judgment.

7. We filed a timely motion to reconsider the dismissal and asked to amend our complaint again. The Court denied our motion. The record indicates that many of the Court's facts and legal conclusions used in its dismissal and denial of reconsideration were false and contradictory .The Mayer defendants filed an untimely request for sanctions against us. We also filed a motion for sanctions (per Local Rule) because the Mayers' attorney had moved; he left no address and we had no place to serve the documents. The Court denied both requests for sanctions.

B. Ninth Circuit Court of Appeals

1. On March 24, 2006, and on May 24 , 2006,we filed our timely consolidated appeals with the Ninth Circuit. We paid two filing fees, and timely served the Mayer defendants- appellees.

2. After receiving two extensions of time we filed our brief and then requested permission to file a corrected brief. We also asked for Judicial Notice of the death certificate for Petitioner Marguerite Sammann(she is still alive). Said death certificate had been created and filed in Minnesota, home state of the appellees, Francis and Louise Mayer.

3. Two of our filings with the Ninth Cir. disappeared and we had to file them all over again.

4. In November and December 2006, the Seattle area experienced a Federal disaster followed by record high winds that knocked out power to more than one million households, including ours. We had no heat, no power and no light. Temperatures were below freezing. We could not finish our filings on time and had to ask for an extension of time.

5. Just before the Panel decided our case, we were informed by an attorney in the Ninth Circuit's Pro-Se division that a litigant's case (in particular unrepresented ones) is judged by how many documents have been filed and are on the docket. We didn't know that. And the pro-se handbook given to pro-se litigants says nothing about this "standard of review" that is solely reserved for unrepresented litigants.

6. On September 27, 2007, a Ninth Circuit panel affirmed the district court's dismissal of our case and denied our request for Judicial Notice. (App 3-5).

7. We asked for an extension of time to file our petition for rehearing and rehearing en banc, because petitioner Nadene Sammann had sustained an injury. The Ninth Circuit Panel agreed to the extension, and we then filed our timely Petition for Rehearing and Rehearing En Banc.

8. On November twenty-ninth, 2007 the Ninth Circuit again denied our Petition for Rehearing and Rehearing En Banc. (App 1-2)

9. We also filed a motion for a stay of the mandate in order to file our Petition for Writ of Certiorari in this Court.

10. For the record, in our motion for a stay, we listed the above issues and reasons that we would ask for in a petition for writ of certiorari in this court.

11. The Ninth Circuit court denied our motion for a stay of mandate.

This timely Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE PETITION

This case unquestionably raises important issues of Constitutional dimension. The Ninth Circuit's blanket affirmation of the District Court's decision all raise important and recurring due process questions on which this Court's guidance is urgently needed.

But the Ninth Circuit's decisions raise troubling questions about the Court's remedies for manifest injustice.

I. **The Court Should Grant Certiorari to Remedy The Manifest Injustice of the Dismissal of Petitioners' Case. The Value of these Substantial Assets Alone Merits a Closer Look And Review of Our Case**

The federal Oil and Gas Leases that are the subject of this case have valuable commercial quantities of oil and gas on them. These substantial assets are multi-million dollar assets.

This case offers the Court an opportunity to lead by example and show how standards of review should operate in practice.

II. The Court Should Grant Certiorari in Order To Exercise its Supervisory Powers and Make Clear To the Lower Courts the Correct Standard of Review

The correct standards of review should be made clear to both the lower courts and to all litigants who appear in a federal court.

The petition should be granted so that this Court, as the ultimate arbiter of due process procedures can articulate and clarify the appropriate standards for deciding cases.

III. The Court Should Grant Certiorari to Address Procedural Due Process.

A. Americans care about fairness and decency.

We share strong concerns about the fundamental and basic elements of fairness in our society. Unfortunately, the Ninth Circuit refused to accord any substantial deference to procedural due process in this case, and no doubt, to other unrepresented litigants as well.

CONCLUSION

This petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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FEBRUARY 26, 2008

APPENDIX

App. 1

UNREPORTED DECISION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NADENE M. SAMMANN, individually; et al.,

Plaintiffs-Appellants

v.

Estate of Elizabeth Sammann; et al.,

Defendants-Appellees.

No. 06-35248, 06-35534

DC No. CV-05-0929-L
Western District of Washington, Seattle

ORDER
(Filed November Twenty-Ninth, 2007)

Before: CANBY, TASHIMA, AND RAWLINSON, CIRCUIT JUDGES

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed appeal.

App.3

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NADENE M. SAMMANN, individually; et al.,

Plaintiffs-Appellants.

v.

Estate of Elizabeth Sammann; et al.,

Defendants-Appellees.

Nos. 06-35248, 06-35534
D.C No. 05-0929 L

MEMORANDUM *

Filed September Twenty-Seventh, 2007

Appeal from the United States District Court
For the Western District of Washington
Robert S. Lasnik , District Judge, Presiding

Submitted September Twenty-Fourth, 2007**

Before: CANBY, TASHIMA, .
RAWLINSON, Circuit Judges.

In these consolidated appeals, Nadene and Marguerite Sammann appeal pro-se from the district court's order dismissng for failure to comply with court orders their action to set aside alleged fraudulent conveyances of federal oil and gas leases.

We have jurisdiction under 28 U.S.C. sec. 1291. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P.34 (a)(2).

The district court did not abuse its discretion when it dismissed the case for failure to comply with court orders after weighing the relevant five factors. *See Pagtalunan v. Galaza,* 291 F.3d 639, 641-44(9th Cir. 2002)(stating that district court's dismissal for failure to comply with a court order is reviewed for an abuse of discretion; setting forth five factors to be considered).

The district court did not abuse its discretion when it denied the motion to amend the judgment because Appellants did not identify any new evidence, change in law, clear error, or manifest injustice. *See Sch. Dist.New. 1j, Multnomah County, Or. V. ACandS. Inc.* 5 F.3d 1255, 1262-63 (9th Cir. 1993) (stating that district court's denial of a motion to amend the judgment is reviewed for an abuse of discretion; setting forth requirements for reconsideration).

Appellants' remaining contentions are unpersuasive.

Appellants' request for judicial notice is denied.

Appellants' motion for reconsideration of the Court's January 7, 2007 order denying their motion to file a corrected replacement brief is denied. Appellants' request for a stay of the due date for their optional reply brief is denied as moot.

AFFIRMED.